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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TK POWER, INC.,

No. C-04-5098 EMC

Plaintiff,

v.

TEXTRON, INC.,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION IN LIMINE TO EXCLUDE
EVIDENCE OF APRIL 2006 TESTING
OF CHARGER #1462**

(Docket No. 211)

On May 12, 2006, the Court heard argument on Defendant's motion in limine to exclude evidence of April 2006 testing of Charger #1462. The Court directed Plaintiff to provide to Defendant by the end of the day the two software files sent along with the January 2006 email to Gary Fleer to determine whether those constituted the same software that was sent to Carlton Hearn on November 3, 2005. On May 15, Defendant reported back to the Court that its examination indicated it was the same.

Accordingly, the Court finds although the January 5, 2006 e-mail should have been provided earlier to Defendant, Defendant has not suffered any trial prejudice as a result. The motion to exclude is therefore **DENIED**. This denial is without prejudice to Defendant moving for monetary

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1 sanctions for costs incurred (if any) as a result of Plaintiff's failure to provide timely the January e-
2 mail and attachments in connection with the second Fleer deposition.

3 This order disposes of Docket No. 211.

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5 IT IS SO ORDERED.

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7 Dated: May 15, 2006

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EDWARD M. CHEN
United States Magistrate Judge

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